

Union Calendar No. 290

114TH CONGRESS
1ST SESSION

S. 1172

[Report No. 114-384, Part I]

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2015

Referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

DECEMBER 18, 2015

Reported from the Committee on Oversight and Government Reform with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

DECEMBER 18, 2015

The Committee on Homeland Security discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on July 31, 2015]

A BILL

To improve the process of presidential transition.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Edward ‘Ted’ Kaufman*
5 *and Michael Leavitt Presidential Transitions Improve-*
6 *ments Act of 2015”.*

7 **SEC. 2. PRESIDENTIAL TRANSITION IMPROVEMENTS.**

8 *(a) IN GENERAL.—The Presidential Transition Act of*
9 *1963 (3 U.S.C. 102 note) is amended—*

10 *(1) by redesignating sections 4, 5, and 6 as sec-*
11 *tions 5, 6, and 7, respectively; and*

12 *(2) by inserting after section 3 the following:*

13 **“SEC. 4. TRANSITION SERVICES AND ACTIVITIES BEFORE**
14 **ELECTION.**

15 *“(a) DEFINITIONS.—In this section—*

16 *“(1) the term ‘Administrator’ means the Admin-*
17 *istrator of General Services;*

18 *“(2) the term ‘agency’ means an Executive agen-*
19 *cy, as defined in section 105 of title 5, United States*
20 *Code;*

21 *“(3) the term ‘eligible candidate’ has the mean-*
22 *ing given that term in section 3(h)(4); and*

23 *“(4) the term ‘Presidential election’ means a gen-*
24 *eral election held to determine the electors of President*

1 *and Vice President under section 1 or 2 of title 3,*
2 *United States Code.*

3 “(b) *GENERAL DUTIES.*—*The President shall take such*
4 *actions as the President determines necessary and appro-*
5 *priate to plan and coordinate activities by the Executive*
6 *branch of the Federal Government to facilitate an efficient*
7 *transfer of power to a successor President, including by—*

8 “(1) *establishing and operating a White House*
9 *transition coordinating council in accordance with*
10 *subsection (d); and*

11 “(2) *establishing and operating an agency tran-*
12 *sition directors council in accordance with subsection*
13 *(e).*

14 “(c) *FEDERAL TRANSITION COORDINATOR.*—*The Ad-*
15 *ministrator shall designate an employee of the General*
16 *Services Administration who is a senior career appointee*
17 *to—*

18 “(1) *carry out the duties and authorities of the*
19 *General Services Administration relating to Presi-*
20 *dential transitions under this Act or any other provi-*
21 *sion of law;*

22 “(2) *serve as the Federal Transition Coordinator*
23 *with responsibility for coordinating transition plan-*
24 *ning across agencies, including through the agency*

1 *transition directors council established under sub-*
2 *section (e);*

3 *“(3) ensure agencies comply with all statutory*
4 *requirements relating to transition planning and re-*
5 *porting; and*

6 *“(4) act as a liaison to eligible candidates.*

7 *“(d) WHITE HOUSE TRANSITION COORDINATING*
8 *COUNCIL.—*

9 *“(1) ESTABLISHMENT.—Not later than 6 months*
10 *before the date of a Presidential election, the President*
11 *shall establish a White House transition coordinating*
12 *council for purposes of facilitating the Presidential*
13 *transition.*

14 *“(2) DUTIES.—The White House transition co-*
15 *ordinating council shall—*

16 *“(A) provide guidance to agencies and the*
17 *Federal Transition Coordinator regarding prep-*
18 *arations for the Presidential transition, includ-*
19 *ing succession planning and preparation of*
20 *briefing materials;*

21 *“(B) facilitate communication and infor-*
22 *mation sharing between the transition represent-*
23 *atives of eligible candidates and senior employees*
24 *in agencies and the Executive Office of the Presi-*
25 *dent; and*

1 “(C) prepare and host interagency emer-
2 gency preparedness and response exercises.

3 “(3) MEMBERSHIP.—The members of the White
4 House transition coordinating council shall include—

5 “(A) senior employees of the Executive
6 branch selected by the President, which may in-
7 clude the Chief of Staff to the President, any
8 Cabinet officer, the Director of the Office of Man-
9 agement and Budget, the Administrator, the Di-
10 rector of the Office of Personnel Management, the
11 Director of the Office of Government Ethics, and
12 the Archivist of the United States;

13 “(B) the Federal Transition Coordinator;

14 “(C) the transition representative for each
15 eligible candidate, who shall serve in an advisory
16 capacity; and

17 “(D) any other individual the President de-
18 termines appropriate.

19 “(4) CHAIRPERSON.—The Chairperson of the
20 White House transition coordinating council shall be
21 a senior employee in the Executive Office of the Presi-
22 dent, designated by the President.

23 “(e) AGENCY TRANSITION DIRECTORS COUNCIL.—

1 “(1) *IN GENERAL.*—*The President shall establish*
2 *and operate an agency transition directors council,*
3 *which shall—*

4 “(A) *ensure the Federal Government has an*
5 *integrated strategy for addressing interagency*
6 *challenges and responsibilities around Presi-*
7 *dential transitions and turnover of noncareer*
8 *appointees;*

9 “(B) *coordinate transition activities be-*
10 *tween the Executive Office of the President, agen-*
11 *cies, and the transition team of eligible can-*
12 *didates and the President-elect and Vice-Presi-*
13 *dent-elect; and*

14 “(C) *draw on guidance provided by the*
15 *White House transition coordinating council and*
16 *lessons learned from previous Presidential tran-*
17 *sitions in carrying out its duties.*

18 “(2) *DUTIES.*—*As part of carrying out the re-*
19 *sponsibilities under paragraph (1), the agency transi-*
20 *tion directors council shall—*

21 “(A) *assist the Federal Transition Coordi-*
22 *nator in identifying and carrying out the re-*
23 *sponsibilities of the Federal Transition Coordi-*
24 *nator relating to a Presidential transition;*

1 “(B) provide guidance to agencies in gath-
2 ering briefing materials and information relat-
3 ing to the Presidential transition that may be
4 requested by eligible candidates;

5 “(C) ensure materials and information de-
6 scribed in subparagraph (B) are prepared not
7 later than November 1 of a year during which a
8 Presidential election is held;

9 “(D) ensure agencies adequately prepare ca-
10 reer employees who are designated to fill non-ca-
11 reer positions under subsection (f) during a Pres-
12 idential transition; and

13 “(E) consult with the President’s Manage-
14 ment Council, or any successor thereto, in car-
15 rying out the duties of the agency transition di-
16 rectors council.

17 “(3) MEMBERSHIP.—The members of the agency
18 transition directors council shall include—

19 “(A) the Federal Transition Coordinator
20 and the Deputy Director for Management of the
21 Office of Management and Budget, who shall
22 serve as Co-Chairpersons of the agency transition
23 directors council;

1 “(B) other senior employees serving in the
2 *Executive Office of the President, as determined*
3 *by the President;*

4 “(C) a senior representative from each agen-
5 *cy described in section 901(b)(1) of title 31,*
6 *United States Code, the Office of Personnel Man-*
7 *agement, the Office of Government Ethics, and*
8 *the National Archives and Records Administra-*
9 *tion whose responsibilities include leading Presi-*
10 *dential transition efforts within the agency;*

11 “(D) a senior representative from any other
12 *agency determined by the Co-Chairpersons to be*
13 *an agency that has significant responsibilities*
14 *relating to the Presidential transition process;*
15 *and*

16 “(E) during a year during which a Presi-
17 *dential election will be held, a transition rep-*
18 *resentative for each eligible candidate, who shall*
19 *serve in an advisory capacity.*

20 “(4) *MEETINGS.*—*The agency transition direc-*
21 *tors council shall meet—*

22 “(A) *subject to subparagraph (B), not less*
23 *than once per year; and*

24 “(B) *during the period beginning on the*
25 *date that is 6 months before a Presidential elec-*

1 *tion and ending on the date on which the Presi-*
2 *dent-elect is inaugurated, on a regular basis as*
3 *necessary to carry out the duties and authorities*
4 *of the agency transition directors council.*

5 “(f) *INTERIM AGENCY LEADERSHIP FOR TRANSI-*
6 *TIONS.—*

7 “(1) *OVERSIGHT AND IMPLEMENTATION OF*
8 *TRANSITION.—Not later than 6 months before the date*
9 *of a Presidential election, the head of each agency*
10 *shall designate a senior career employee of the agency*
11 *and a senior career employee of each major compo-*
12 *nent and subcomponent of the agency to oversee and*
13 *implement the activities of the agency, component, or*
14 *subcomponent relating to the Presidential transition.*

15 “(2) *ACTING OFFICERS.—Not later than Sep-*
16 *tember 15 of a year during which a Presidential elec-*
17 *tion occurs, and in accordance with subchapter III of*
18 *chapter 33 of title 5, United States Code, for each*
19 *noncareer position in an agency that the head of the*
20 *agency determines is critical, the head of the agency*
21 *shall designate a qualified career employee to serve in*
22 *the position in an acting capacity if the position be-*
23 *comes vacant.*

24 “(g) *MEMORANDUMS OF UNDERSTANDING.—*

1 “(1) *IN GENERAL.*—Not later than November 1 of
2 a year during which a Presidential election occurs,
3 the President (acting through the Federal Transition
4 Coordinator) shall, to the maximum extent prac-
5 ticable, negotiate a memorandum of understanding
6 with the transition representative of each eligible can-
7 didate, which shall include, at a minimum, the condi-
8 tions of access to employees, facilities, and documents
9 of agencies by transition staff.

10 “(2) *EXISTING RESOURCES.*—To the maximum
11 extent practicable, the memorandums of under-
12 standing negotiated under paragraph (1) shall be
13 based on memorandums of understanding from pre-
14 vious Presidential transitions.

15 “(h) *EQUITY IN ASSISTANCE.*—Any information or
16 other assistance provided to eligible candidates under this
17 section shall be offered on an equal basis and without regard
18 to political affiliation.

19 “(i) *REPORTS.*—

20 “(1) *IN GENERAL.*—The President, acting
21 through the Federal Transition Coordinator, shall
22 submit to the Committee on Oversight and Govern-
23 ment Reform of the House of Representatives and the
24 Committee on Homeland Security and Governmental
25 Affairs of the Senate reports describing the activities

1 *undertaken by the President and agencies to prepare*
2 *for the transfer of power to a new President.*

3 *“(2) TIMING.—The reports under paragraph (1)*
4 *shall be provided 6 months and 3 months before the*
5 *date of a Presidential election.”.*

6 *(b) OTHER IMPROVEMENTS.—Section 3 of the Presi-*
7 *dential Transition Act of 1963 (3 U.S.C. 102 note) is*
8 *amended—*

9 *(1) in subsection (a)—*

10 *(A) in paragraph (8)—*

11 *(i) in subparagraph (A)(i)—*

12 *(I) by inserting “and during the*
13 *term of a President” after “during the*
14 *transition”; and*

15 *(II) by striking “after inaugura-*
16 *tion”; and*

17 *(ii) in subparagraph (B), by inserting*
18 *“or Executive agencies (as defined in sec-*
19 *tion 105 of title 5, United States Code)” be-*
20 *fore the period; and*

21 *(B) in paragraph (10), by inserting “in-*
22 *cluding, to the greatest extent practicable, human*
23 *resource management system software compatible*
24 *with the software used by the incumbent Presi-*

1 *dent and likely to be used by the President-elect*
2 *and Vice President-elect” before the period;*

3 *(2) in subsection (b)(2), by striking “30 days”*
4 *and inserting “180 days”;*

5 *(3) in subsection (g), by inserting “except for ac-*
6 *tivities under subsection (a)(8)(A),” before “there*
7 *shall be no”;* and

8 *(4) in subsection (h)(2), by adding at the end the*
9 *following:*

10 *“(D) An eligible candidate shall have a right to the*
11 *services and facilities described in this paragraph until the*
12 *date on which the Administrator is able to determine the*
13 *apparent successful candidates for the office of President*
14 *and Vice President.”.*

15 *(c) TECHNICAL AND CONFORMING AMENDMENTS.—*

16 *(1) Section 3 of the Pre-Election Presidential*
17 *Transition Act of 2010 (3 U.S.C. 102 note) is re-*
18 *pealed.*

19 *(2) The Presidential Transition Act of 1963 (3*
20 *U.S.C. 102 note) is amended—*

21 *(A) in section 3—*

22 *(i) in subsection (a)(4)(B), by striking*
23 *“section 6” and inserting “section 7”;*

24 *(ii) in subsection (b), in the matter*
25 *preceding paragraph (1), by striking “sec-*

1 *tion 3 of this Act” and inserting “this sec-*
2 *tion”; and*

3 *(iii) in subsection (h)(3)(B)(iii), by*
4 *striking “section 5” each place it appears*
5 *and inserting “section 6”;*

6 *(B) in section 6, as redesignated by sub-*
7 *section (a) of this section, by striking “section*
8 *6(a)(1)” each place it appears and inserting*
9 *“section 7(a)(1)”;* and

10 *(C) in section 7(a)(2), as redesignated by*
11 *subsection (a) of this section, by striking “section*
12 *4” and inserting “section 5”.*

13 *(3) Section 8331(1)(K) of title 5, United States*
14 *Code, is amended by striking “section 4” and insert-*
15 *ing “section 5”.*

16 *(4) Section 8701(a)(10) of title 5, United States*
17 *Code, is amended by striking “section 4” and insert-*
18 *ing “section 5”.*

19 *(5) Section 8901(1)(I) of title 5, United States*
20 *Code, is amended by striking “section 4” and insert-*
21 *ing “section 5”.*

22 **SEC. 3. NATIONAL ARCHIVES PRESIDENTIAL TRANSITION.**

23 *Section 2203(g) of title 44, United States Code, is*
24 *amended—*

1 (1) *by redesignating paragraph (3) as para-*
2 *graph (4); and*

3 (2) *by inserting after paragraph (2) the fol-*
4 *lowing:*

5 “(3) *When the President considers it practicable and*
6 *in the public interest, the President shall include in the*
7 *President’s budget transmitted to Congress, for each fiscal*
8 *year in which the term of office of the President will expire,*
9 *such funds as may be necessary for carrying out the au-*
10 *thorities of this subsection.”.*

11 **SEC. 4. REPORTS ON POLITICAL APPOINTEES APPOINTED**
12 **TO NONPOLITICAL PERMANENT POSITIONS.**

13 (a) *DEFINITIONS.—In this section—*

14 (1) *the term “agency” has the meaning given the*
15 *term “Executive agency” in section 105 of title 5,*
16 *United States Code;*

17 (2) *the term “covered civil service position”*
18 *means a position in the civil service (as defined in*
19 *section 2101 of title 5, United States Code) that is*
20 *not—*

21 (A) *a temporary position; or*

22 (B) *a political position;*

23 (3) *the term “former political appointee” means*
24 *an individual who—*

1 (A) is not serving in an appointment to a
2 political position; and

3 (B) served as a political appointee during
4 the 5-year period ending on the date of the re-
5 quest for an appointment to a covered civil serv-
6 ice position in any agency;

7 (4) the term “political appointee” means an in-
8 dividual serving in an appointment to a political po-
9 sition; and

10 (5) the term “political position” means—

11 (A) a position described under sections 5312
12 through 5316 of title 5, United States Code (re-
13 lating to the Executive Schedule);

14 (B) a noncareer appointment in the Senior
15 Executive Service, as defined under paragraph
16 (7) of section 3132(a) of title 5, United States
17 Code; or

18 (C) a position in the executive branch of the
19 Government of a confidential or policy-deter-
20 mining character under schedule C of subpart C
21 of part 213 of title 5, Code of Federal Regula-
22 tions.

23 (b) *REPORTING ON CURRENT OR RECENT POLITICAL*
24 *APPOINTEES APPOINTED TO COVERED CIVIL SERVICE PO-*
25 *SITIONS.—*

1 (1) *ANNUAL REPORT.*—*Except as provided in*
2 *paragraph (2), the Director of the Office of Personnel*
3 *Management shall submit to the Committee on Home-*
4 *land Security and Governmental Affairs of the Senate*
5 *and the Committee on Oversight and Government Re-*
6 *form of the House of Representatives an annual re-*
7 *port regarding requests by agencies to appoint polit-*
8 *ical appointees or former political appointees to cov-*
9 *ered civil service positions. Each report shall cover*
10 *one calendar year and shall—*

11 (A) *for each request by an agency that a po-*
12 *litical appointee be appointed to a covered civil*
13 *service position during the period covered by the*
14 *report, provide—*

15 (i) *the date on which the request was*
16 *received by the Office of Personnel Manage-*
17 *ment;*

18 (ii) *subject to subsection (c), the name*
19 *of the individual and the political position*
20 *held by the individual, including title, of-*
21 *fice, and agency;*

22 (iii) *the date on which the individual*
23 *was first appointed to a political position*
24 *in the agency in which the individual is*
25 *serving as a political appointee;*

1 (iv) the grade and rate of basic pay for
2 the individual as a political appointee;

3 (v) the proposed covered civil service
4 position, including title, office, and agency,
5 and the proposed grade and rate of basic
6 pay for the individual;

7 (vi) whether the Office of Personnel
8 Management approved or denied the re-
9 quest; and

10 (vii) the date on which the individual
11 was appointed to a covered civil service po-
12 sition, if applicable; and

13 (B) for each request by an agency that a
14 former political appointee be appointed to a cov-
15 ered civil service position during the period cov-
16 ered by the report, provide—

17 (i) the date on which the request was
18 received by the Office of Personnel Manage-
19 ment;

20 (ii) subject to subsection (c), the name
21 of the individual and the political position
22 held by the individual, including title, of-
23 fice, and agency;

1 (iii) the date on which the individual
2 was first appointed to any political posi-
3 tion;

4 (iv) the grade and rate of basic pay for
5 the individual as a political appointee;

6 (v) the date on which the individual
7 ceased to serve in a political position;

8 (vi) the proposed covered civil service
9 position, including title, office, and agency,
10 and the proposed grade and rate of basic
11 pay for the individual;

12 (vii) whether the Office of Personnel
13 Management approved or denied the re-
14 quest; and

15 (viii) the date on which the individual
16 was first appointed to a covered civil service
17 position, if applicable.

18 (2) *QUARTERLY REPORT IN CERTAIN YEARS.*—*In*
19 *the last year of the term of a President, or, if applica-*
20 *ble, the last year of the second consecutive term of a*
21 *President, the report required under paragraph (1)*
22 *shall be submitted quarterly and shall cover each*
23 *quarter of the year, except that the last quarterly re-*
24 *port shall also cover January 1 through 20 of the fol-*
25 *lowing year.*

1 (c) *NAMES AND TITLES OF CERTAIN APPOINTEES.*—
 2 *If determined appropriate by the Director of the Office of*
 3 *Personnel Management, a report submitted under sub-*
 4 *section (b) may exclude the name or title of a political ap-*
 5 *pointee or former political appointee—*

6 (1) *who—*

7 (A) *was requested to be appointed to a cov-*
 8 *ered civil service position; and*

9 (B) *was not appointed to a covered civil*
 10 *service position; or*

11 (2) *relating to whom a request to be appointed*
 12 *to a covered civil service position is pending at the*
 13 *end of the period covered by that report.*

14 **SEC. 5. REPORT ON REGULATIONS PROMULGATED NEAR**
 15 **THE END OF PRESIDENTIAL TERMS.**

16 (a) *DEFINITIONS.*—*In this section:*

17 (1) *The term “covered presidential transition pe-*
 18 *riod” means each of the following:*

19 (A) *The 120-day period ending on January*
 20 *20, 2001.*

21 (B) *The 120-day period ending on January*
 22 *20, 2009.*

23 (C) *The 120-day period ending on January*
 24 *20, 2017.*

1 (2) *The term “covered regulation” means a final*
2 *significant regulatory action promulgated by an Ex-*
3 *ecutive department.*

4 (3) *The term “significant regulatory action”*
5 *means any regulatory action that is likely to result*
6 *in a rule that may—*

7 (A) *have an annual effect on the economy of*
8 *\$100,000,000 or more or adversely affect in a*
9 *material way the economy, a sector of the econ-*
10 *omy, productivity, competition, jobs, the environ-*
11 *ment, public health or safety, or State, local, or*
12 *tribal governments or communities;*

13 (B) *create a serious inconsistency or other-*
14 *wise interfere with an action taken or planned*
15 *by another agency;*

16 (C) *materially alter the budgetary impact of*
17 *entitlements, grants, user fees, or loan programs*
18 *or the rights and obligations of recipients thereof;*
19 *or*

20 (D) *raise novel legal or policy issues.*

21 (4) *The term “Executive department” has the*
22 *meaning given that term under section 101 of title 5,*
23 *United States Code.*

24 (b) *REPORT.—*

1 (1) *IN GENERAL.*—*The Comptroller General of*
2 *the United States shall submit to the Committee on*
3 *Homeland Security and Governmental Affairs of the*
4 *Senate and the Committee on Oversight and Govern-*
5 *ment Reform of the House of Representatives a report*
6 *regarding covered regulations promulgated during*
7 *each covered presidential transition period.*

8 (2) *CONTENTS OF REPORT.*—*The report required*
9 *under paragraph (1) shall, to the extent feasible, for*
10 *each covered presidential transition period—*

11 (A) *compare the number, scope, and impact*
12 *of, and type of rulemaking procedure used for,*
13 *covered regulations promulgated during the cov-*
14 *ered presidential transition period to the num-*
15 *ber, scope, and impact of, and type of rule-*
16 *making procedure used for, covered regulations*
17 *promulgated during the 120-day periods ending*
18 *on January 20 of each year after 1996, other*
19 *than 2001, 2009, and 2017;*

20 (B) *determine the statistical significance of*
21 *any differences identified under subparagraph*
22 *(A) and whether and to what extent such dif-*
23 *ferences indicate any patterns;*

1 (C) evaluate the size, scope, and effect of the
2 covered regulations promulgated during the cov-
3 ered presidential transition period; and

4 (D) assess the extent to which the regularly
5 required processes for the promulgation of cov-
6 ered regulations were followed during the covered
7 presidential transition period, including compli-
8 ance with the requirements under—

9 (i) chapter 8 of title 5, United States
10 Code (commonly known as the “Congres-
11 sional Review Act”);

12 (ii) the Small Business Regulatory En-
13 forcement Fairness Act of 1996 (5 U.S.C.
14 601 note);

15 (iii) sections 202, 203, 204, and 205 of
16 the Unfunded Mandates Reform Act of 1995
17 (2 U.S.C. 1532-1535);

18 (iv) chapter 6 of title 5, United States
19 Code (commonly known as the “Regulatory
20 Flexibility Act”); and

21 (v) chapter 35 of title 44, United
22 States Code (commonly known as the “Pa-
23 perwork Reduction Act”).

1 **SEC. 6. ANALYSIS OF THREATS AND VULNERABILITIES.**

2 (a) *IN GENERAL.*—Not later than February 15, 2016,
3 the Secretary of Homeland Security shall submit to the
4 Committee on Homeland Security and Governmental Af-
5 fairs of the Senate and the Committees on Oversight and
6 Government Reform and Homeland Security of the House
7 of Representatives a report analyzing the threats and
8 vulnerabilities facing the United States during a presi-
9 dential transition, which—

10 (1) shall identify and discuss vulnerabilities re-
11 lated to border security and threats related to ter-
12 rorism, including from weapons of mass destruction;

13 (2) shall identify steps being taken to address the
14 threats and vulnerabilities during a presidential
15 transition; and

16 (3) may include recommendations for actions by
17 components and agencies within the Department of
18 Homeland Security.

19 (b) *FORM.*—The report submitted under subsection (a)
20 shall be prepared in unclassified form, but may contain a
21 classified annex.

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